

THE HONORABLE JOHN H. CHUN

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
SEATTLE DIVISION

SONNY JOYCE, Individually and On Behalf of
All Others Similarly Situated,

Plaintiff,

v.

AMAZON.COM, INC., ANDREW R. JASSY,
JEFFREY P. BEZOS, BRIAN T. OLSAVKSY,
DAVID A. ZAPOLSKY, and NATE SUTTON,

Defendants.

CLASS ACTION

Case No.: 2:22-cv-00617-JHC

**RESPONSE TO NOTICE OF
RELATED CASES (Dkt. No. 36)**

RESPONSE TO NOTICE OF RELATED
CASES
(CASE No. 2:22-CV-00617-JHC)

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1 Plaintiff Sonny Joyce (“Plaintiff”) hereby respectfully responds to the Notice of
 2 Related Cases filed by Defendants Amazon.com, Inc. (“Amazon”), Andrew R. Jassy, Jeffrey
 3 P. Bezos, Brian T. Olsavsky, David A. Zapolsky, and Nate Sutton (collectively,
 4 “Defendants”) on July 11, 2022 (Dkt. No. 36).

5 Plaintiff joins *in toto* Defendants’ arguments in support of their position that the
 6 actions *Asbestos Workers Philadelphia Welfare and Pension Fund v. Amazon.com, Inc., et*
 7 *al.*, 2:22-cv-00934-JCC (“*Asbestos Workers*”) and *Detectives Endowment Association*
 8 *Annuity Fund v. Amazon.com, Inc., et al.*, 2:22-cv-0095-JRC (“*Detectives*”) are related to the
 9 above-captioned action (“*Joyce*”). As the Notice of Related Cases states, “all three cases
 10 concern substantially the same parties, property, transaction, or event”; “the class periods of
 11 these cases substantially overlap”; and “the three complaints relay on at least one common
 12 event: alleged misstatements on Amazon’s 4th quarter 2021 earnings call.” Dkt. No. 36 at
 13 1-2 (internal quotations and citations omitted).

14 Plaintiff likewise agrees with Defendants that, given the timing of the filing of
 15 *Asbestos Workers* and *Detectives*, considered together with the filing and voluntary dismissal
 16 of yet another action, *CWA Local 1180 Members’ Annuity Fund v. Amazon.com, Inc.*, 2:22-
 17 cv-00907 (“*CWA Local*”), “Plaintiffs’ counsel in *Detectives* appears to agree that the cases
 18 are related.” Dkt. No. 36 at 2.

19 Plaintiff further submits that the timing of the filing and voluntary dismissal of *CWA*
 20 *Local*, considered alongside the timing of the filing of *Asbestos Workers* and *Detectives*,
 21 evinces a deliberate effort to avoid consolidation of these three cases with the earlier-filed
 22 *Joyce* action, in contravention of the purposes of the Private Securities Litigation Reform
 23 Act of 1995 (“PSLRA”). As putative class actions alleging violations of the federal securities
 24 laws, *Joyce*, *CWA Local*, *Asbestos Workers*, and *Detectives* are governed by the PSLRA,
 25 which provides, in relevant part, that “not later than 60 days after the date on which the notice
 26 is published, any member of the purported class may move the court to serve as lead plaintiff
 27
 28

of the purported class”, 15 U.S.C. § 78u-4(a)(3)(A)(i)(II), and that “[i]f more than one action on behalf of a class asserting substantially the same claim or claims arising under this chapter has been filed,” the Court must adjudicate any motion to consolidate those actions before appointing a Lead Plaintiff. 15 U.S.C. § 78u-4(a)(3)(A)(ii).

Joyce was filed on May 6, 2022, asserting securities fraud claims under Section 10(b) of the Securities Exchange Act of 1934 arising from alleged misrepresentations and omissions concerning Amazon’s use of third-party seller data, and alleging a class period extending from February 1, 2019 through April 4, 2022, inclusive. *See* Dkt. No. 1. The PSLRA-mandated notice of pendency of the *Joyce* action was also published on May 6, 2022. Accordingly, pursuant to the PSLRA, any motion for appointment as Lead Plaintiff in *Joyce* was due to be filed on or before July 5, 2022. 15 U.S.C. § 78u-4(a)(3)(A)(i).

On June 28, 2022, just eight days before the Lead Plaintiff motion deadline in *Joyce*, *CWA Local* was filed, also asserting Section 10(b) claims arising from alleged misrepresentations and omissions concerning Amazon’s use of third-party seller data, as well as additional Section 10(b) claims relating to the costs of Amazon’s expansion of its warehouse and fulfillment network. *See generally CWA Local* Dkt. No. 1. The *CWA Local* Complaint alleged a class period extending from February 1, 2019 through April 28, 2022, inclusive—*i.e.*, encompassing the entirety of the *Joyce* class period and extending it by 24 days. *Id.* ¶ 1. Given that *Joyce* and *CWA Local* obviously involved common questions of law and fact, consolidation of the two actions was plainly warranted under Fed. R. Civ. P. 42(a). *See, e.g., Sayce v. Forescout Techs., Inc.*, No. 20-cv-00076-SI, 2020 U.S. Dist. LEXIS 129646, at *9 (N.D. Cal. July 22, 2020) (“Consolidation may be appropriate even where complaints allege different misrepresentations.”). And given that *CWA Local* alleged “substantially the same claim[s]” as *Joyce*, the PSLRA would have required the Court to adjudicate such consolidation motion before appointing a Lead Plaintiff to serve in a single consolidated action. 15 U.S.C. § 78u-4(a)(3)(A)(ii). Per standard PSLRA motion practice,

1 it is a near-certainty that any lead plaintiff movants in *Joyce* would have concurrently moved
2 to consolidate *Joyce* and *CWA Local*.

3 However, on June 30, 2022—just six days before the July 5, 2022 lead plaintiff
4 motion deadline in *Joyce*—*CWA Local* was voluntarily dismissed. Accordingly, *CWA Local*
5 was no longer pending as of the *Joyce* lead plaintiff motion deadline, meaning that lead
6 plaintiff movants in *Joyce* could not and did not seek consolidation of *Joyce* and *CWA Local*
7 concurrently with filing their lead plaintiff motions.

8 Then, on July 6, 2022—just one day after the *Joyce* lead plaintiff motion deadline—
9 *Asbestos Workers* was filed. Like *CWA Local*, *Asbestos Workers* asserted 10(b) claims
10 arising from misrepresentations and omissions concerning the costs of Amazon’s expansion
11 of its warehouse and fulfillment network. *See generally Asbestos Workers* Dkt. No. 1.
12 However, unlike *CWA Local*, *Asbestos Workers* omitted any fraud claims related to
13 Amazon’s use of third-party seller data. *Asbestos Workers* alleged a class period extending
14 from July 30, 2021 through April 28, 2022, inclusive—*i.e.*, shorter than the *CWA Local* class
15 period, but still overlapping in significant part with *Joyce*. *Asbestos Workers* Dkt. No. 1 ¶ 1.
16 Counsel for plaintiff in *Asbestos Workers* published a notice of pendency of the new action,
17 advising putative class members of a September 6, 2022 deadline to seek appointment as
18 lead plaintiff.

19 Two days later, on July 8, 2022, *Detectives* was filed, asserting substantively the same
20 claims and alleging the same class period as *Detectives*. *See generally Detectives* Dkt. No.
21 1. Conspicuously, **counsel for plaintiff in *Detectives* is the same firm that filed *CWA***
22 ***Local*.**

23 Taken together, the circumstances strongly suggest a deliberate effort to game the
24 PSLRA by avoiding the consolidation of clearly related actions and artificially severing the
25 claims concerning the costs of Amazon’s expansion of its warehouse and fulfillment
26 network, as originally alleged in *CWA Local*, from the third-party seller data claims alleged
27

1 in *Joyce*. Because *CWA Local* was voluntarily dismissed before the July 5, 2022 lead
2 plaintiff motion deadline in *Joyce*, *CWA Local* could not be consolidated with *Joyce*. Then,
3 immediately after the *Joyce* lead plaintiff motion deadline passed, *Asbestos Workers* was
4 filed, re-asserting the warehouse and fulfillment network claims first alleged in *CWA*
5 *Local*—i.e., just after the immediate risk that those claims would be consolidated with the
6 claims in *Joyce* had passed.

7 Accordingly, Plaintiff respectfully submits that *Asbestos Workers* and *Detectives* are
8 plainly related to *Joyce*, and that holding otherwise would reward transparent gamesmanship
9 by counsel.

10 Dated: July 14, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of July, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/ Ben Stephens
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